

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF Case

HUGHES CONTRACTING INDUSTRIES, INC.,

Civil Action No. 08 CIV 10075 (LBS)

Plaintiff,

ANSWER

-against-

RELIANCE CONSTRUCTION OF CANADA
a/k/a Construction Reliance du Canada ltee;
RELIANCE CONSTRUCTION, LTD d/b/a
RCG GROUP, also known as RCG
CONSTRUCTION GROUP; and
STEVEN KAPLAN,

Defendants.

Defendants, by their attorneys Greenberg, Trager & Herbst, LLP, hereby submit their Answer to the Complaint of plaintiff Hughes Contracting Industries Ltd. and allege as follows.

JURISDICTION; VENUE; JURY DEMAND

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. Defendants deny the allegations contained in paragraphs 2, 3, 4, 5, 6 and 7.

AS AND FOR A FIRST CAUSE OF ACTION IN QUANTUM MERUIT

3. Defendants deny the allegations contained in paragraphs 8, 9, 10, 11, 12, 13 and "21".

FIRST AFFIRMATIVE DEFENSE

4. This Court lacks subject matter jurisdiction over this case because there is no federal question and there is no complete diversity of citizenship between plaintiff and defendants. At the time plaintiff filed its complaint, defendant Reliance Construction Ltd. maintained its principal place of business at 145 Palisade Street, Dobbs Ferry, New York 10522 and plaintiff is a New York corporation with its principal place of business located at 391 Saw Mill River Road, Yonkers, New York 10701.

SECOND AFFIRMATIVE DEFENSE

5. This Court lacks personal jurisdiction over the defendants.

THIRD AFFIRMATIVE DEFENSE

6. Plaintiff's Complaint fails to state a cause of action against defendants upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

7. The claims in plaintiff's Complaint are barred because any contract entered into with plaintiff with regard to the construction project alleged in the Complaint was as agent for East 51st Street Development Company, LLC (Owner) and plaintiff was fully aware that East 51st Street Development Company, LLC was responsible for any and all payments to plaintiff for any work performed by plaintiff on the Project.

FIFTH AFFIRMATIVE DEFENSE

8. The claims in plaintiff's Complaint are barred because plaintiff did not substantially perform the contract and did not complete its work.

SIXTH AFFIRMATIVE DEFENSE

9. The claims in plaintiff's Complaint are barred because of plaintiff's material breaches of the contract and failure to complete its work.

SEVENTH AFFIRMATIVE DEFENSE

10. The claims in plaintiff's amended Complaint against RCG are barred due to plaintiff's negligence and plaintiff's culpable wrongful conduct.

EIGHTH AFFIRMATIVE DEFENSE

11. The claims in plaintiff's Complaint are barred to the extent that plaintiff failed to mitigate any of its alleged damages.

NINTH AFFIRMATIVE DEFENSE

12. The claims in plaintiff's Complaint are barred by defendant Reliance Construction Ltd.'s lawful and proper termination of the contract.

TENTH AFFIRMATIVE DEFENSE

13. The claims in plaintiff's Complaint are barred to the extent that plaintiff lacks capacity and/or standing to maintain its claims in this action.

ELEVENTH AFFIRMATIVE DEFENSE

14. Plaintiff's Complaint should be dismissed because plaintiff has failed to join an indispensable party to this action, i.e., East 51st Street Development Company, LLC.

TWELFTH AFFIRMATIVE DEFENSE

15. The claims in plaintiff's Complaint are barred due to the fact that plaintiff was fully paid for its work on the construction project alleged in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

16. The claims in plaintiff's Complaint are barred by the terms and conditions of the contract.

FOURTEENTH AFFIRMATIVE DEFENSE

17. Defendants have and had no contractual or quasi-contractual relationship with plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

18. Any dealings that defendant Steven Kaplan had with plaintiff was as an officer and employee of Reliance Construction of Canada and thus plaintiff has no claim against Steven Kaplan individually.

SIXTEENTH AFFIRMATIVE DEFENSE

19. The claims in plaintiff's Complaint are barred because none of the defendants received or derived any benefit from any work performed by plaintiff on the construction project alleged in the Complaint.

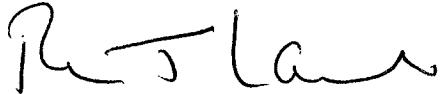
SEVENTEENTH AFFIRMATIVE DEFENSE

20. Plaintiff failed to properly serve the defendants with the Summons and Complaint.

WHEREFORE, defendants demand judgment dismissing plaintiff's Complaint against defendants in its entirety with prejudice and for such other and further relief as the Court deems just and proper, including costs and attorneys' fees.

Dated: New York, New York
December 16, 2008

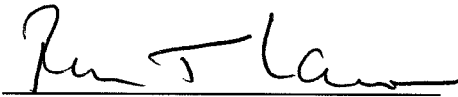
GREENBERG, TRAGER & HERBST, LLP
Attorneys for Defendants
767 Third Avenue, 12th Floor
New York, New York 10017
212-688-1900

By: 
Richard J. Lambert (RL 7471)

To: S. Mac Gutman, Esq.
GUTMAN & GUTMAN
Attorneys for Plaintiff
33 Main Street
Port Washington, New York 11050
516-944-0401

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the following Service List in the Manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.


Richard J. Lambert (7471)

SERVICE LIST

**HUGHES CONTRACTING INDUSTRIES LTD. v RELIANCE CONSTRUCTION OF
CANADA et al**

**Case No.: 08-cv-10075- Sand/Pitman
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Mac Stanley Gutman
Gutman & Gutman
33 Main Street
Port Washington, New York 11050
516-944-0401
516-944-0310 (fax)
mac@gutmanandgutman.net

By First Class Mail upon:

Mac Stanley Gutman
Gutman & Gutman
33 Main Street
Port Washington, New York 11050
516-944-0401
516-944-0310 (fax)

By Telecopier upon:

Mac Stanley Gutman
Gutman & Gutman
33 Main Street
Port Washington, New York 11050
516-944-0401
516-944-0310 (fax)